

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 37426

|                        |   |                                  |
|------------------------|---|----------------------------------|
| STATE OF IDAHO,        | ) | 2010 Unpublished Opinion No. 680 |
|                        | ) |                                  |
| Plaintiff-Respondent,  | ) | Filed: October 19, 2010          |
|                        | ) |                                  |
| v.                     | ) | Stephen W. Kenyon, Clerk         |
|                        | ) |                                  |
| KENNETH ASHLEY KERSEY, | ) | THIS IS AN UNPUBLISHED           |
|                        | ) | OPINION AND SHALL NOT            |
| Defendant-Appellant.   | ) | BE CITED AS AUTHORITY            |
|                        | ) |                                  |

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Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Michael E. Wetherell, District Judge.

Judgment of conviction and unified sentence of eighteen years, with a minimum period of confinement of five years, for sexual abuse of a child under the age of sixteen years, affirmed.

Molly J. Huskey, State Appellate Public Defender; Eric D. Fredericksen, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

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Before LANSING, Chief Judge, GRATTON, Judge  
and MELANSON, Judge

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PER CURIAM

Kenneth Ashley Kersey was convicted of sexual abuse of a child under the age of sixteen years, Idaho Code § 18-1506. The district court imposed a unified sentence of eighteen years, with a minimum period of confinement of six years and retained jurisdiction. At the conclusion of the retained jurisdiction program, the court relinquished jurisdiction and ordered execution of Kersey's sentence, reducing the determinate term to five years. Kersey appeals the court's decision to relinquish jurisdiction and contends that the court abused its discretion in failing to sua sponte reduce his sentence upon relinquishing jurisdiction.

The decision as to whether to place a defendant on probation or, instead, to relinquish jurisdiction is committed to the discretion of the sentencing court. *State v. Hernandez*, 122 Idaho 227, 230, 832 P.2d 1162, 1165 (Ct. App. 1992); *State v. Lee*, 117 Idaho 203, 786 P.2d 594 (Ct. App. 1990); *State v. Toohill*, 103 Idaho 565, 567, 650 P.2d 707, 709 (Ct. App. 1982). Therefore, a decision to relinquish jurisdiction will not be disturbed on appeal except for an abuse of discretion. *State v. Chapman*, 120 Idaho 466, 816 P.2d 1023 (Ct. App. 1991). The record in this case shows that the district court properly considered the information before it and determined that probation was not appropriate. Therefore, we hold that the district court did not abuse its discretion.

Sentencing is a matter for the trial court's discretion. Both our standard of review and the factors to be considered in evaluating the reasonableness of a sentence are well established and need not be repeated here. See *State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *Toohill*, 103 Idaho at 568, 650 P.2d at 710. When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007).

Applying the foregoing standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion in ordering execution of Kersey's modified sentence. Therefore, the order relinquishing jurisdiction and directing execution of Kersey's sentence, as modified, is affirmed.